

IN THE UNITED STATES PATENT AND TRADEMARK OFFICE  
BEFORE THE BOARD OF PATENT APPEALS AND INTERFERENCES

In re Application of: Kyle et al.  
Serial No.: 09/838,652  
Filed: April 19, 2001  
Group Art Unit: 2155  
Before the Examiner: Asad M. Nawaz  
Title: DETERMINING LOGON STATUS IN A BROADBAND  
NETWORK SYSTEM AND AUTOMATICALLY  
RESTORING LOGON CONNECTIVITY

**REPLY BRIEF UNDER 37 C.F.R. §41.41**

Mail Stop Appeal Brief - Patents  
Commissioner for Patents  
P.O. Box 1450  
Alexandria, VA 22313-1450

Dear Sir:

This Reply Brief is being submitted in response to the Examiner's Answer dated February 15, 2007, with a two-month statutory period for response set to expire on April 15, 2007.

I. RESPONSE TO EXAMINER'S ARGUMENTS:

- A. Response to Examiner's assertion that Hotmail™, Yahoo™ mail, G-mail, e-Bay™, banking websites, Ticketmaster™ and ISPs teach Appellants' invention, as discussed on pages 9-10 of Examiner's Answer.

As understood by Appellants, the Examiner appears to assert that Appellants' invention is taught by Hotmail™, Yahoo™ mail, G-mail, e-Bay™, banking websites, Ticketmaster™ and ISPs. Examiner's Answer, pages 9-10. However, the Examiner does not specifically point out where each of Appellants' claim limitations is taught by these companies and websites. The Examiner clearly believes based on his own subjective opinion that a patent should not be granted on these claims. If it is so obvious that a patent should not be granted, Appellants are astonished as to why the Examiner consistently reopened prosecution (reopened prosecution on the merits two consecutive times) and wasted the time and monies of Appellants.

Further, while the Examiner in his subjective opinion believes that a patent should not be granted on Appellants' claims, this is not the standard in presenting a *prima facie* case of anticipation and a *prima facie* case of obviousness. As discussed in Appellants' Third Appeal Brief and herein, the Examiner has not presented a *prima facie* case of anticipation in rejecting claims 1, 14 and 40. Further, as discussed in Appellants' Third Appeal Brief and herein, the Examiner has not presented a *prima facie* case of obviousness in rejecting claims 1-52.

- B. Response to Examiner's assertion that Raguseo discloses "establishing a first connection between a client an Internet gateway" as recited in claim 1 and similarly in claims 14 and 40, as discussed on pages 10-11 of Examiner's Answer.

The Examiner asserts that Raguseo discloses "establishing a first connection between a client an Internet gateway" as recited in claim 1 and similarly in claims 14 and 40. Examiner's Answer, pages 10-11. The Examiner asserts that a "redirector," as defined in Raguseo, discloses an Internet gateway. Examiner's Answer, page 10. Raguseo defines a "redirector" as "software, installed on each client workstation and on each server, which enables the user of a workstation to use a remote resource in

the same way of a local one." Page 2, lines 9-12. An Internet gateway may refer to a router or server that connects non-IP networks to the Internet. See [http://www.techweb.com/encyclopedia/defineterm.jhtml;jsessionid=IBTLLCS25SUK4QSNL0SKHSCJUNN2JVN?term=internet+gateway&\\_requestid=117884](http://www.techweb.com/encyclopedia/defineterm.jhtml;jsessionid=IBTLLCS25SUK4QSNL0SKHSCJUNN2JVN?term=internet+gateway&_requestid=117884).

Further, Appellants discussed that an Internet gateway may connect users of clients, commonly referred to as subscribers, to the Internet. Appellants' Specification, page 1, lines 15-17. The Examiner must provide a basis in fact and/or technical reasoning to support the assertion that a redirector, as taught in Raguseo, discloses an Internet gateway. *Ex parte Levy*, 17 U.S.P.Q.2d 1461, 1464 (Bd. Pat. App. & Inter. 1990). That is, the Examiner must provide extrinsic evidence that must make clear that a redirector, as taught in Raguseo, discloses an Internet gateway, and that it would be so recognized by persons of ordinary skill. *In re Robertson*, 169 F.3d 743, 745 (Fed. Cir. 1999). Since the Examiner has not provided any such objective evidence, the Examiner has not presented a *prima facie* case of anticipation in rejecting claims 1, 14 and 40. M.P.E.P. §2131.

- C. Response to Examiner's assertion that Raguseo discloses "checking status of said first connection by issuing a first request to said Internet gateway to access a web server utilizing a protocol blocked under a logged off status" as recited in claim 1 and similarly in claims 14 and 40, as discussed on page 11 of Examiner's Answer.

The Examiner asserts that Raguseo discloses "checking status of said first connection by issuing a first request to said Internet gateway to access a web server utilizing a protocol blocked under a logged off status" as recited in claim 1 and similarly in claims 14 and 40. Examiner's Answer, page 11. The Examiner again cites page 5, lines 18-25 and page 6, lines 1-10 of Raguseo as evidence that Raguseo discloses the above-cited claim limitation. Examiner's Answer, page 11. However, the Examiner does not provide any logical rationale for concluding that the cited passages disclose checking the status of a first connection by issuing a first request to the Internet gateway to access a web server utilizing a protocol blocked under a logged off status. The Examiner must provide a basis in fact and/or technical reasoning to support the assertion that the cited passages disclose checking the status

of a first connection by issuing a first request to the Internet gateway to access a web server utilizing a protocol blocked under a logged off status. *Ex parte Levy*, 17 U.S.P.Q.2d 1461, 1464 (Bd. Pat. App. & Inter. 1990). That is, the Examiner must provide extrinsic evidence that must make clear that the cited passages disclose checking the status of a first connection by issuing a first request to the Internet gateway to access a web server utilizing a protocol blocked under a logged off status, and that it would be so recognized by persons of ordinary skill. *In re Robertson*, 169 F.3d 743, 745 (Fed. Cir. 1999). Since the Examiner has not provided any such objective evidence, the Examiner has not presented a *prima facie* case of anticipation in rejecting claims 1, 14 and 40. M.P.E.P. §2131.

- D. Response to Examiner's assertion that Raguseo discloses "automatically attempting to establish a second connection to said Internet gateway if said web server was not accessed from said first request" as recited in claim 1 and similarly in claims 14 and 40, as discussed on page 12 of Examiner's Answer.

The Examiner asserts that Raguseo discloses "automatically attempting to establish a second connection to said Internet gateway if said web server was not accessed from said first request" as recited in claim 1 and similarly in claims 14 and 40. Examiner's Answer, page 12. The Examiner again cites page 3, lines 38-40 of Raguseo as evidence that Raguseo discloses the above-cited claim limitation. Examiner's Answer, page 12. However, the Examiner appears to be ignoring claim language. In an anticipation rejection, a claim is anticipated only if each and every element as set forth in the claim is found, either expressly or inherently described, in a single prior art reference. *Verdegaal Bros. v. Union Oil Co. of California*, 814 F.2d 628, 631, 2 U.S.P.Q.2d 1051, 1053 (Fed. Cir. 1987); M.P.E.P. §2131. The Examiner has not addressed the limitation of automatically attempting to establish a second connection to the Internet gateway if the web server was not accessed from the first request (referring to the request issued to the Internet gateway to access the web server utilizing a protocol blocked under a logged off status). Instead, the Examiner asserts that Raguseo discloses polling (though column 3, lines 38-40 of Raguseo is silent regarding polling) and then concludes that Raguseo discloses the above-cited

claim limitation. This is insufficient in establishing a *prima facie* case of anticipation in rejecting claims 1, 14 and 40. M.P.E.P. §2131.

- E. Response to Examiner's assertion that Khanna and Byrne teach "establishing a first connection between a client and an Internet gateway" as recited in claim 1 and similarly in claims 14 and 40, as discussed on pages 12-13 of Examiner's Answer.

The Examiner had previously cited column 7, lines 42-57 of Khanna as teaching "establishing a first connection between a client and an Internet gateway" as recited in claim 1 and similarly in claims 14 and 40. Khanna instead teaches that a server receives a new SYN segment from a client requesting a connection with the server. Column 7, lines 44-46. Appellants pointed out that the Examiner had not provided any basis for concluding that the server taught in Khanna is an Internet gateway. Appellants' Third Appeal Brief, page 8. The Examiner now cites column 4, lines 17-22 which discusses an ISP. Examiner's Answer, page 13. Khanna teaches that the internet connection 16 may be made via a third party, such as an "Internet Service Provider" ("ISP"). Column 4, lines 20-22. As illustrated in Figure 1 of Khanna, the internet connection 16 and ISP are not server 20. Hence, the Examiner has still not shown that the server, as taught in Khanna, is an Internet gateway. Therefore, the Examiner has not presented a *prima facie* case of obviousness in rejecting claims 1, 14 and 40, since the Examiner is relying upon incorrect, factual predicates in support of the rejection. *In re Rouffet*, 47 U.S.P.Q.2d 1453, 1455 (Fed. Cir. 1998).

- F. Response to Examiner's assertion that Khanna and Byrne teach "determining whether said web server is accessed from said first request" as recited in claim 1 and similarly in claims 14 and 40.

The Examiner had previously cited column 7, lines 46-62 of Khanna as teaching "determining whether said web server is accessed from said first request" as recited in claim 1 and similarly in claims 14 and 40. Office Action (8/11/2006), page 4. The Examiner now cites column 5, lines 44-66 of Khanna as well as column 7, lines 20-26 of Byrne as teaching the above-cited claim limitation. Examiner's Answer, page 14. Appellants respectfully traverse.

Khanna instead teaches the 3-way handshake of TCP as the Examiner discusses on pages 13-14 of the Examiner's Answer. Column 5, lines 44-66. There is no language in the cited passage that teaches determining whether a web server is accessed from the request (referring to the request to the Internet gateway to access a web server utilizing a protocol blocked under a logged off status). Therefore, the Examiner has not presented a *prima facie* case of obviousness in rejecting claims 1, 14 and 40, since the Examiner is relying upon incorrect, factual predicates in support of the rejection. *In re Rouffet*, 47 U.S.P.Q.2d 1453, 1455 (Fed. Cir. 1998).

Further, if the Examiner is asserting that Khanna does not teach a portion of the above-cited claim limitation and is citing Byrne to correct that deficiency, the Examiner must provide a motivation or suggestion to modify Khanna to include such missing claim limitation. M.P.E.P. §§2142-2143. Since the Examiner has not provided such motivation, the Examiner has not presented a *prima facie* case of obviousness in rejecting claims 1, 14 and 40. M.P.E.P. §§2142-2143.

Further, Byrne instead teaches recognizing a first node coupled to a backbone of a data communications network and in response to an update message transmitted according to a private network-to-network interface (PNNI) protocol within the network, that a first end-to-end connection between the first node and a second node coupled to the backbone of the data communications network has failed; and continuing communications between the first node and the second node via a second end-to-end connection established at approximately the same time as the first end-to-end connection and prior to the failure of the first end-to-end connection. Column 7, lines 20-32. There is no language in the cited passage that teaches determining whether a web server is accessed from the request (referring to the request to the Internet gateway to access a web server utilizing a protocol blocked under a logged off status). Therefore, the Examiner has not presented a *prima facie* case of obviousness in rejecting claims 1, 14 and 40, since the Examiner is relying upon incorrect, factual predicates in support of the rejection. *In re Rouffet*, 47 U.S.P.Q.2d 1453, 1455 (Fed. Cir. 1998).

- G. Response to Examiner's assertion that Khanna and Byrne teach "automatically attempting to establish a second connection to said Internet gateway if said web server was not accessed from said first request" as recited in claim 1 and similarly in claims 14 and 40, as discussed on page 14 of Examiner's Answer.

The Examiner had previously cited column 7, lines 46-57 and Figure 5 of Khanna as teaching "automatically attempting to establish a second connection to said Internet gateway if said web server was not accessed from said first request" as recited in claim 1 and similarly in claims 14 and 40. Office Action (8/11/2006), page 5. The Examiner repeated this assertion in the Examiner's Answer (page 14) and hence Appellants will not address the issue again for the sake of brevity.

However, the Examiner now also cites column 7, lines 20-26 of Byrne as teaching at least a portion of the above-cited claim limitation. Examiner's Answer, page 14. If the Examiner is asserting that Khanna does not teach a portion of the above-cited claim limitation and is citing Byrne to correct that deficiency, the Examiner must provide a motivation or suggestion to modify Khanna to include such missing claim limitation. M.P.E.P. §§2142-2143. Since the Examiner has not provided such motivation, the Examiner has not presented a *prima facie* case of obviousness in rejecting claims 1, 14 and 40. M.P.E.P. §§2142-2143.

Further, Byrne instead teaches recognizing a first node coupled to a backbone of a data communications network and in response to an update message transmitted according to a private network-to-network interface (PNNI) protocol within the network, that a first end-to-end connection between the first node and a second node coupled to the backbone of the data communications network has failed; and continuing communications between the first node and the second node via a second end-to-end connection established at approximately the same time as the first end-to-end connection and prior to the failure of the first end-to-end connection. Column 7, lines 20-32. There is no language in the cited passage that teaches automatically attempting to establish a second connection to the Internet gateway. Neither is there any language in the cited passage that teaches automatically attempting to establish a second connection to the Internet gateway if a web server was not accessed from the

request (referring to the request to the Internet gateway to access a web server utilizing a protocol blocked under a logged off status). Therefore, the Examiner has not presented a *prima facie* case of obviousness in rejecting claims 1, 14 and 40, since the Examiner is relying upon incorrect, factual predicates in support of the rejection. *In re Rouffet*, 47 U.S.P.Q.2d 1453, 1455 (Fed. Cir. 1998).

- H. Response to Examiner's assertion that Khanna and Byrne teach "wherein if said web server was accessed from said first request, then the method further comprises the steps of: waiting for a first period of time" as recited in claim 2 and similarly in claims 15 and 41, as discussed on pages 14-15 of Examiner's Answer.

The Examiner had previously cited column 6, lines 55-67 of Khanna as teaching "wherein if said web server was accessed from said first request, then the method further comprises the steps of: waiting for a first period of time" as recited in claim 2 and similarly in claims 15 and 41. Office Action (8/11/2006), page 5. The Examiner now cites column 2, lines 8-23 and column 7, lines 10-29 of Khanna as teaching the above-cited claim limitation. Examiner's Answers, pages 14-15. Appellants respectfully traverse.

Khanna instead teaches that in slow-start, both ends of a connection maintain a window of unacknowledged packets called the congestion window. Column 2, lines 8-10. Khanna further teaches that although slow-start is advantageous for avoiding network congestion, it degrades server performance when many short-lived connections are made. Column 2, lines 21-23. Khanna further teaches that when a connection is closed actively, the connection lingers in TIME-WAIT state for  $2 * \text{MSL}$ . Column 7, lines 10-11. There is no language in the cited passages that teaches waiting for a period of time if the web server was accessed from the first request (referring to the request to the Internet gateway to access a web server utilizing a protocol blocked under a logged off status). Therefore, the Examiner has not presented a *prima facie* case of obviousness in rejecting claims 2, 15 and 41, since the Examiner is relying upon incorrect, factual predicates in support of the rejection. *In re Rouffet*, 47 U.S.P.Q.2d 1453, 1455 (Fed. Cir. 1998).



- I. Response to Examiner's assertion that Khanna and Byrne teach "wherein if said web server was accessed from said first request, then the method further comprises the steps of: checking status of said first connection by issuing a second request to said Internet gateway to access said web server utilizing said protocol blocked under said logged off status" as recited in claim 2 and similarly in claims 15 and 41, as discussed on page 15 of Examiner's Answer.

The Examiner had previously cited column 7, line 46 – column 8, line 20 of Khanna as teaching "wherein if said web server was accessed from said first request, then the method further comprises the steps of: checking status of said first connection by issuing a second request to said Internet gateway to access said web server utilizing said protocol blocked under said logged off status" as recited in claim 2 and similarly in claims 15 and 41. Office Action (8/11/2006), page 5. The Examiner now cites column 7, lines 10-18 of Khanna as teaching the above-cited claim limitation. Examiner's Answer, page 15. Appellants respectfully traverse.

Khanna instead teaches that when a connection is closed actively, the connection lingers in TIME-WAIT state for 2\*MSL. Column 7, lines 10-11. Khanna further teaches that however, the server may accept a new SYN from a client to reopen the connection directly from TIME-WAIT state, if the server assigns its initial sequence number for the new connection to be larger than the largest sequence number used on the previous connection incarnation, and returns to TIME-WAIT state if the SYN turns out to be an old duplicate. Column 7, lines 11-17.

There is no language in the cited passage that teaches checking the status of the first connection by issuing a second request to the Internet gateway. Neither is there any language in the cited passage that teaches checking the status of the first connection by issuing a second request to the Internet gateway if a web server was accessed from the first request (referring to the request to the Internet gateway to access a web server utilizing a protocol blocked under a logged off status). Neither is there any language in the cited passage that teaches checking the status of the first connection by issuing a second request to the Internet gateway to access the web server utilizing the protocol blocked under the logged off status if the web server was

accessed from the first request. Therefore, the Examiner has not presented a *prima facie* case of obviousness in rejecting claims 2, 15 and 41, since the Examiner is relying upon incorrect, factual predicates in support of the rejection. *In re Rouffet*, 47 U.S.P.Q.2d 1453, 1455 (Fed. Cir. 1998).

- J. Response to Examiner's assertion that Khanna and Byrne teach "wherein upon said attempting to establish said connection to said Internet gateway the method further comprises the step of: waiting for a second period of time, wherein said second period of time is less than said first period of time; and checking status of said attempted second connection by issuing a third request to said Internet gateway to access said web server utilizing said protocol blocked under said logged off status" as recited in claim 3 and similarly in claims 16 and 42, as discussed on pages 15-16 of Examiner's Answer.

The Examiner had previously cited column 6, line 56 – column 7, line 30 of Khanna as teaching "wherein upon said attempting to establish said connection to said Internet gateway the method further comprises the step of: waiting for a second period of time, wherein said second period of time is less than said first period of time; and checking status of said attempted second connection by issuing a third request to said Internet gateway to access said web server utilizing said protocol blocked under said logged off status" as recited in claim 3 and similarly in claims 16 and 42. Office Action (8/11/2006), page 6. The Examiner now cites column 2, lines 8-23 of Khanna as teaching the above-cited claim limitation. Examiner's Answer, pages 15-16. Appellants respectfully traverse.

Khanna instead teaches that in slow-start, both ends of a connection maintain a window of unacknowledged packets called the congestion window. Column 2, lines 8-10. Khanna further teaches that although slow-start is advantageous for avoiding network congestion, it degrades server performance when many short-lived connections are made. Column 2, lines 21-23.

There is no language in the cited passage that teaches waiting for a second period of time, where the second period of time is less than the first period of time. Neither is there any language in the cited passage that teaches waiting for a second

period of time, where the second period of time is less than the first period of time upon attempting to establish a connection to the Internet gateway. Neither is there any language in the cited passage that teaches checking the status of an attempted second connection by issuing a third request to the Internet gateway to access a web server. Neither is there any language in the cited passage that teaches checking the status of an attempted second connection by issuing a third request to the Internet gateway to access a web server utilizing the protocol blocked under the logged off status. Therefore, the Examiner has not presented a *prima facie* case of obviousness in rejecting claims 3, 16 and 42, since the Examiner is relying upon incorrect, factual predicates in support of the rejection. *In re Rouffet*, 47 U.S.P.Q.2d 1453, 1455 (Fed. Cir. 1998).

- K. Response to Examiner's assertion that Khanna and Byrne teach "wherein said first connection is established by a first logon procedure" as recited in claim 4 and similarly in claims 17 and 43, as discussed on page 16 of Examiner's Answer.

The Examiner reiterates his assertion that column 7, lines 42-46 of Khanna teaches "wherein said first connection is established by a first logon procedure" as recited in claim 4 and similarly in claims 17 and 43. Khanna instead teaches that a server receives a new SYN segment from a client requesting a connection with the server. Column 7, lines 44-46. The Examiner asserts that this language is consistent with Appellants' interpretation of a logon procedure. Examiner's Answer, page 16. Appellants respectfully traverse.

The Examiner has not provided any basis in fact and/or logical reasoning to support such an assertion. The Examiner must provide a basis in fact and/or technical reasoning to support the assertion that the teaching of a server receiving a new SYN segment from a client requesting a connection with the server is the same as establishing a connection by a logon procedure. *See Ex parte Levy*, 17 U.S.P.Q.2d 1461, 1464 (Bd. Pat. App. & Inter. 1990). That is, the Examiner must provide extrinsic evidence that must make clear that the teaching of a server receiving a new SYN segment from a client requesting a connection with the server is the same as

establishing a connection by a logon procedure, and that it would be so recognized by persons of ordinary skill. *See In re Robertson*, 169 F.3d 743, 745 (Fed. Cir. 1999). Since the Examiner has not provided any such objective evidence, the Examiner has not presented a *prima facie* case of obviousness for rejecting claims 4, 17 and 43. M.P.E.P. §2143.

- L. Response to Examiner's assertion that Khanna and Byrne teach "terminating said first logon procedure; and executing a second logon procedure" as recited in claim 5 and similarly in claims 18 and 44, as discussed on pages 16-17 of Examiner's Answer.

The Examiner had previously cited column 7, lines 4-9 and 46-62 of Khanna as teaching "terminating said first logon procedure; and executing a second logon procedure" as recited in claim 5 and similarly in claims 18 and 44. Office Action (8/11/2006), page 6. The Examiner now cites column 7, lines 42-46 of Khanna as teaching the above-cited claim limitation. Examiner's Answer, page 16. Appellants respectfully traverse.

Khanna instead teaches that a server receives a new SYN segment from a client requesting a connection with the server. Column 7, lines 44-46. There is no language in the cited passages that teaches terminating a logon procedure. Neither is there any language in the cited passages that teaches executing a second logon procedure. Therefore, the Examiner has not presented a *prima facie* case of obviousness in rejecting claims 5, 18 and 44, since the Examiner is relying upon incorrect, factual predicates in support of the rejection. *In re Rouffet*, 47 U.S.P.Q.2d 1453, 1455 (Fed. Cir. 1998).

Further, the Examiner must provide a basis in fact and/or technical reasoning to support the assertion that the teaching of a server receiving a new SYN segment from a client requesting a connection with the server is the same as terminating a logon procedure and executing a second logon procedure. *See Ex parte Levy*, 17 U.S.P.Q.2d 1461, 1464 (Bd. Pat. App. & Inter. 1990). That is, the Examiner must provide extrinsic evidence that must make clear that the teaching of a server receiving a new SYN segment from a client requesting a connection with the server is the same

as terminating a logon procedure and executing a second logon procedure, and that it would be so recognized by persons of ordinary skill. *See In re Robertson*, 169 F.3d 743, 745 (Fed. Cir. 1999). Since the Examiner has not provided any such objective evidence, the Examiner has not presented a *prima facie* case of obviousness for rejecting claims 5, 18 and 44. M.P.E.P. §2143.

- M. Examiner's assertion that Examiner's source of motivation for modifying Khanna with Byrne to include the missing claim limitation of claims 1, 14 and 40 comes from one of ordinary skill in the art, as discussed on page 18 of Examiner's Answer.

The Examiner now states that the motivation for modifying Khanna with Byrne to include the missing claim limitation of claims 1, 14 and 40 comes from one of ordinary skill in the art. Examiner's Answer, page 18. However, the Examiner is still required to provide independent evidence to support the assertion that the suggestion to combine references comes from the knowledge and common sense of a person of ordinary skill in the art. *See Smiths Industries Medical Systems Inc. v. Vital Signs Inc.*, 51 U.S.P.Q.2d 1415, 1421 (Fed. Cir. 1999). The reliance on "*common knowledge and common sense*" may not be substituted for evidence. *In re Lee*, 61 U.S.P.Q.2d 1430, 1435 (Fed. Cir. 2002). The Federal Circuit in *In re Lee* specifically held that *Bozek* did not hold that common knowledge and common sense are a substitute for evidence. *Id.* Nor does *Bozek*, after thirty-two years of isolation, outweigh the dozens of rulings of the Federal Circuit and the Circuit of Customs and Patent Appeals that determination of patentability must be based on evidence. *Id.* The Examiner must submit objective evidence in support of modifying a reference. *In re Lee* at 1434; *In re Kotzab*, 55 U.S.P.Q.2d 1313, 1316-1317 (Fed. Cir. 2000). The factual question of motivation is material to patentability and cannot be resolved on subjective belief and unknown authority. *In re Lee* at 1434. The Examiner simply states that "examples of this (referring to the source of motivation being from a person of ordinary skill in the art) are given in the response to arguments section above." Examiner's Answer, page 18. Appellants did not identify any language in the response to arguments section of the Examiner's Answer that provided any evidence that the source of motivation for modifying Khanna with Byrne to include

the missing claim limitations of claims 1, 14 and 40 comes from one of ordinary skill in the art. Since the Examiner has not provided any objective evidence in support of modifying Khanna with Byrne to include the missing claim limitations of claims 1, 14 and 40, the Examiner has not established a *prima facie* case of obviousness in rejecting claims 1-10, 14-23 and 40-49. *Id.*

N. Other matters raised by the Examiner.

All other matters raised by the Examiner have been adequately addressed above and in Appellants' Third Appeal Brief and therefore will not be addressed herein for the sake of brevity.

II. CONCLUSION:

For the reasons stated above and in Appellants' Third Appeal Brief, Appellants respectfully assert that the rejections of claims 1-26 and 40-52 are in error. Appellants respectfully request reversal of the rejections and allowance of claims 1-26 and 40-52.

Respectfully submitted,

WINSTEAD PC

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